APPENDIX

Opinion of the Court of Appeals

STATE OF NEW YORK
COURT OF APPEALS

No. 483

ELEANORE M. LOEB, *Appellant*,

v.

WILLIAM LOEB, *Respondent*.

Decided June 25, 1958

Froessel, J.

Plaintiff and defendant were married in Connecticut on September 26, 1942. Defendant was then a resident of Vermont and plaintiff a resident of New York, though employed as an instructor in equitation and living at a school in Virginia. In 1944 the parties established their matrimonial domicile in the State of Vermont. There they spent all of their married life together, except that in June, 1951 defendant left plaintiff and took up residence in New Hampshire, where he remained until April, 1952. He then moved to Nevada, where he subsequently obtained an *ex parte* divorce in July, 1952. This decree of divorce made no provision for the support of plaintiff nor for the custody and support of their child.

Meanwhile, however, while defendant was paying plaintiff $700 per month, the parties were negotiating with respect to property rights, permanent support, maintenance, custody and other matters. According to plaintiff, these negotiations were terminated because she refused to execute a release to the woman whom defendant subsequently married, whereupon he paid $300 for the support of the child only.

On November 15, 1952 plaintiff petitioned the Windham County Court in Vermont seeking custody of the daughter

of the marriage. Defendant, after first filing a special appearance, later appeared generally, pleaded the Nevada divorce as a bar to the action, and asked for custody of the child during the school year. Plaintiff in a reply challenged the validity of defendant's Nevada divorce and requested that the court make an order (1) for the support of the child, (2) for the support of plaintiff, and (3) for an award of counsel fees (*Loeb* v. *Loeb*, 118 Vt. 472, 476). A trial was had in June, 1953 in the County Court.

In August, 1953, while the action was still pending in said court, plaintiff sold their home for $21,800. She thereupon moved to the home of defendant's mother in Oyster Bay, New York, apparently staying there from October, 1953 through July, 1955, when she purchased a home in Amenia, Dutchess County, New York, for $35,000, a $20,000 mortgage on which was given by defendant's mother. Plaintiff testified that in October, 1953 she formed the intention to become a resident of the State of New York. As late as August, 1953 she filed her notice of retaining residence in Vermont with the town clerk of Windham. This was more than a year after defendant had secured his divorce.

The Vermont County Court, on March 20, 1954, (1) awarded plaintiff custody of the couple's daughter, granting defendant visitation rights, (2) ordered defendant to pay $450 a month for the support of the child, (3) directed defendant to pay $350 a month for plaintiff's support, and (4) ordered defendant to pay $6,289.39 for attorneys' fees and disbursements. That court also ruled that defendant's Nevada divorce decree was entitled to full faith and credit.

An appeal was taken to the Vermont Supreme Court in April, 1954 and, in a decision of May 3, 1955, that court affirmed so much of the County Court order as related to custody and support of the infant as well as the provision for attorneys' fees and disbursements, agreed that the Ne-

vada divorce was valid, but reversed so much of the lower court determination as related to plaintiff's support. The Vermont Supreme Court took the view that neither under the applicable Vermont statute nor under common law did the County Court have power to entertain a petition for support by a person who had been validly divorced in another jurisdiction (118 Vt., *supra*, pp. 483-486). The Vermont court distinguished the situation before it from cases in which the wife had judgment in her favor awarding support or alimony in separation or limited divorce proceedings *before* the award of the foreign divorce (p. 481, citing *Estin* v. *Estin*, 334 U.S. 541, and *Morris* v. *Morris*, 118 Vt. 270).

Thus the Vermont Supreme Court ruled that, in the absence of statute, plaintiff might not have an award of support in her favor because the Vermont County Court was not vested with jurisdiction—i.e., was not *competent* —to make such an award. It may be noted that a situation parallel to that in New York was a reason for recommendation of the enactment of section 1170-b of the Civil Practice Act (1953 Report of N. Y. Law Rev. Comm., p. 475).

Prior to the decision of the Vermont Supreme Court, plaintiff instituted an action in our courts seeking (1) alternatively an absolute divorce or separation from defendant; (2) provision for her support and maintenance; (3) custody of the infant issue of the marriage and provision for said infant's support, and (4) such other relief as she might be entitled to under sections 1170-a and 1170-b of the Civil Practice Act. On November 23, 1954 she procured a sequestration order against defendant. In November, 1955, after defendant had appeared generally in the action, a supplemental complaint was filed by plaintiff setting forth the decision of the Vermont Supreme Court, and on April 25, 1956 plaintiff amended her complaint to allege her residence in the State for more than

one year so as to comply with section 1170-b of the Civil Practice Act.

The trial court dismissed her complaint in all respects (3 Misc. 2d 622). It correctly held that the issues relating to the validity of the Nevada divorce decree had been resolved against her in the plenary Vermont proceeding which she instituted. The remaining questions on this appeal relate to the application of section 1170-b of the Civil Practice Act to the facts of this case. Plaintiff argues that the section is applicable, and that it was error for the lower courts to have failed to accord her the requested relief under it. Defendant contends that the statute is inapplicable, and that it may not constitutionally afford plaintiff the relief she seeks.

We are thus faced in this case with the question left open by us in *Vanderbilt* v. *Vanderbilt* (1 N. Y. 2d 342, affd. 354 U. S. 416). There we held that where a wife, after separation but *prior* to the grant of an *ex parte* Nevada divorce, established her domicile in New York, she could avail herself of the provisions of section 1170-b and secure an order of support from the New York courts after the Nevada divorce. We stated (p. 351) that we need not decide there "whether she should have the same right to come into New York, even after a foreign-State divorce, to take advantage of section 1170-b".

Section 1170-b of the Civil Practice Act was recommended by the Law Revision Commission in 1952, with the statement that: "The Commission believes that legislation is necessary to protect a New York wife whose right to support from her husband may now be completely cut off by an *ex parte* foreign divorce decree, in the absence of a previous New York separation decree with provision for maintenance." (1953 Report of N. Y. Law Rev. Comm., p. 468.)

The Legislature, in enacting section 1170-b in 1953 with the recommendations of the Law Revision Commission be-

fore them, intended that section to apply only to "New York wives" and not to a spouse who was at no time during the course of her marriage a "New York wife". The purpose of section 1170-b was a protective one; it sought to afford a remedy to wives here whose property rights might be jeopardized by an *ex parte* divorce by their spouses. It was not intended as a substantive grant of a forum to all wives, wherever located, whose husbands had obtained *ex parte* divorces not including support provisions for them.

Recognizing the social problems created by the frequent inequality of mobility and financial means as between husband and wife, the Legislature aimed to aid those wives who were unable to pursue their itinerant spouses and obtain support rights in foreign jurisdictions. However, such a policy is not furthered by allowing emigrant wives to journey to this State to avail themselves of this remedy. The interest of this State is the protection of the families located here, not the attraction of out-of-State spouses who seek to take advantage of our courts. This construction of the statute is supported by the opinions of those courts which have commented upon it (*Vanderbilt* v. *Vanderbilt*, 1 A. D. 2d 3, 11, affd. 1 N. Y. 2d 342, affd. 354 U. S. 416, *supra*; see, also, 43 Corn. L. Q. 265, 270, 274), and avoids the constitutional questions raised by Justices HARLAN and FRANKFURTER in their dissenting opinions in the *Vanderbilt* case (354 U. S. 425, 433-434).

While we are not unmindful of the fact that, so far as this record shows, defendant's conduct toward his wife left much to be desired, the wife has not placed herself in a situation helpful to her in the State of New York. While this State was her domicile before marriage, Vermont was definitely her domicile since 1944. Her husband is said to have abandoned her in June, 1951. He secured his Nevada divorce in July, 1952. In August, 1953 she filed notice of retaining residence in Vermont with the town clerk of Windham, and not until October, 1953, 1¼

years after she had been divorced, did she first declare her intention to become a resident of New York State. She then lived with her mother-in-law some 20 months—not pursuant to any agreement with her husband, for the negotiations had been terminated, but because the husband's mother was exceedingly kind to her and paid all her expenses. In the meantime, she was pursuing her martial rights in the courts of her domicile, the State of Vermont. Under the circumstances presented by this record, it seems abundantly clear that plaintiff has had no contact with New York at any time during the period of their marriage, may in no sense be regarded as a New York wife, and accordingly is not entitled to relief under section 1170-b of the Civil Practice Act.

Under our construction of section 1170-b of the Civil Practice Act, the further issues posed by plaintiff in her brief are of little consequence. While it may be true, as her counsel alleges, that the trial court made certain factual errors, nevertheless the Appellate Division affirmed its exercise of discretion with the facts accurately set forth before them. The contention that section 1170-b mandates a court to grant support in every case is in any event irrelevant here since plaintiff does not come within the ambit of said statute.

The judgment appealed from should be affirmed, without costs.

Dissenting Opinion

DESMOND, J. (dissenting):

The question is whether, because plaintiff moved into this State after defendant divorced her in Nevada, the New York courts are without power under section 1170-b of the Civil Practice Act to direct defendant to make payments to her for her support.

Section 1170-b (*supra*) contains this: "In an action for divorce, separation or annulment * * * where the court refuses to grant such relief by reason of a finding by the court that a divorce * * * declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction of the person was not obtained, the court may, nevertheless, render in the same action such judgment as justice may require for the maintenance of the wife." As we shall show, justice surely requires that this defendant support this plaintiff. The question is whether there is authority in section 1170-b for the provision of such justice by the New York courts. The courts below have held that because of the earlier Nevada divorce the Full Faith and Credit Clause (art. IV, § 1) of the Federal Constitution forbids the application here of section 1170-b.

This chronology will furnish a factual background:

1942—plaintiff, a resident, and defendant, a former resident of New York State, were married in Connecticut.

1944—the parties took up marital residence in Vermont.

1948—a child was born to the parties.

1951—defendant left the family home after announcing his intention to get a divorce and marry another woman and after an agreement between the parties that defendant would continue to pay plaintiff $700 a month for herself and the child and that she and the child would move to the vicinity of Oyster Bay, N. Y., to be near defendant's mother.

1952—defendant refused any longer to pay plaintiff for her own support (he has never since supported her) but continued to support the child. In June, 1952 he went to Nevada where he obtained a divorce in a proceeding in which plaintiff was not personally served and did not appear. The Nevada decree dissolved the marriage but made no provision whatever for support or custody. In November,

1952 plaintiff sued defendant in Vermont for support and custody and for a declaration of invalidity of the Nevada judgment.

1953—in August plaintiff moved to defendant's mother's home in New York State, remaining there until July, 1955 when she bought a residence in New York State in which she has since lived.

1954—in March the Vermont County Court held the Nevada divorce legal and awarded to plaintiff custody of the child and support for her and the child. Later in 1954 plaintiff, obtaining jurisdiction by sequestering defendant's property here, brought in a New York court the present action for a divorce or separation and for support and custody.

1955—the Vermont Supreme Court affirmed the County Court as to the validity of the Nevada judgment and as to custody and support of the child but held that under Vermont law there was no power in the courts to grant support to a woman already validly divorced from her husband. In other words, the Vermont appellate court held itself powerless to pass on plaintiff's prayer for alimony.

1957—after a trial the New York Supreme Court and the Appellate Division dismissed plaintiff's complaint in this suit.

I agree with so much of the decision below in this case as holds that the Nevada divorce is binding. I can see no reason, however, why defendant cannot under section 1170-b (*supra*) be compelled to give plaintiff the support to which she has a right and which he has refused her.

The history and purpose of section 1170-b (*supra*) have been thoroughly explored in the 1953 Law Revision Commission Report recommending its enactment and in *Vanderbilt* v. *Vanderbilt* (1 N. Y. 2d 342, aff'd. 354 U. S. 416). The Legislature granted to the New York courts a new

power to award alimony, when and as justice so requires, to a wife against whom a divorce has been granted without jurisdiction of her person having been obtained. Our decision and that of the United States Supreme Court in the *Vanderbilt* case made it settled law that the statute is generally constitutional even when the wife has not gotten a judgment or agreement for her support before the dissolution of her marriage. Specifically, *Vanderbilt* held that the "Full Faith and Credit" due to the Nevada judgment as a dissolution of the marital status was no bar to later section 1170-b relief. In *Vanderbilt* we left open (because it was not presented by the facts) the question of whether section 1170-b was available to a woman who came to live in New York State after a foreign divorce. And we do not now have to decide whether under any and every possible circumstances the remedy can be demanded by a divorced wife who for her own reasons selects New York as a forum. On the particular facts of this case we must answer these questions: first, is it unconstitutional to apply section 1170-b to one who like this plaintiff became domiciled in New York after divorce, and, second, if it be not unconstitutional so to do, is it contrary to our public policy and the meaning and purpose of section 1170-b?

Vanderbilt v. *Vanderbilt* (354 U. S. 416, 419, *supra*) held flatly that a Nevada decree just like the one here under consideration could not cut off the wife's support right and that "the Nevada decree, to the extent it purported to affect the wife's right to support, was void and the Full Faith and Credit Clause did not obligate New York to give it recognition". The right, therefore, remained. May New York enforce it under the circumstances of this case?

The Supreme Court's majority opinion in *Vanderbilt* v. *Vanderbilt* (*supra*) assumed without discussion that Mrs. Vanderbilt was sufficiently a domiciliary of New York State so that New York could constitutionally enforce

her right to support. One of the dissenting Justices in the United States Supreme Court complained (354 U. S. 425) that the *Vanderbilt* decision would mean that a divorced wife "may sue wherever she can serve the other spouse or attach his property", but he conceded (p. 426) that "New York has substantial connection with a domiciliary who has been divorced *ex parte* in Nevada". The other dissenting Supreme Court Justice in the *Vanderbilt* case thought (p. 435) that the *Vanderbilt* case should have been remanded to the New York courts for a determination (which our courts had in fact already made) as to whether Mrs. Vanderbilt was a New York domiciliary from the time she entered the State.

From all of the above it follows that the only real problem here is whether on the facts of the present case New York had sufficient "contacts" with this marriage so as to permit jurisdiction of this suit. That question is not to be answered "no" just because these two people never lived together in this State since that was the fact as to the Vanderbilts, also. The only reason for a negative answer would be that this plaintiff moved to New York after her husband's divorce. The sound and compelling reason for an affirmative answer is that she moved here by agreement with defendant and at his request. She did not shop around and pick the State most advantageous to her and most inconvenient and expensive for her former husband. Perhaps since her husband had abandoned her she could legally have done just that. But on the facts as they are, justice and public policy forbid defendant from now questioning the validity or effect of the change of domicile he himself urged on his wife.

Some point is made that because of the use in section 1170-b (*supra*) of the word "may" the granting or refusal of relief is discretionary. Possibly that is so, at least as to the amount of support money, but the Appellate Division apparently granted leave to appeal so that we might pass on a question of law and that law question must

be as to whether there is in this case any legal bar to relief. I think there is none.

The judgment should be reversed, with costs, and the case remitted to the Appellate Division to pass on the question of discretion.

Judges Dye, Fuld, Van Voorhis and Burke concur with Judge Froessel; Judge Desmond dissents in an opinion in which Chief Judge Conway concurs.

Judgment affirmed.

Order Granting Leave to Appeal to the Court of Appeals

At a Term of the Appellate Division held in and for the First Judicial Department in the County of New York on the 8th day of October, 1957.

Present:

Hon. Benard Botein,
Presiding Justice,
Benjamin J. Rabin,
Martin M. Frank,
Francis L. Valente,
James B. M. McNally,
Justices.

Eleanore M. Loeb, Plaintiff-Appellant

against

William Loeb, Defendant-Respondent.

The above-named plaintiff-appellant, having moved for leave to appeal to the Court of Appeals from the order of this Court entered herein on the 30th day of April, 1957.

Now, upon reading and filing the notice of motion, with proof of due service thereon, and the affidavit of Alexander

C. Dick in support of said motion, and the affidavit of Alexis C. Coudert in opposition thereto, it is hereby

ORDERED, that the said motion be and the same hereby is granted, and that this Court hereby certifies that in its opinion a question of law is involved which ought to be reviewed by the Court of Appeals.

Enter,

B. B.,
Justice.

Opinion of the Supreme Court, New York County (Dismissing Complaint)

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

ELEANORE M. LOEB, Plaintiff,

v.

WILLIAM LOEB, Defendant.

Special Term—Part IV

By Mr. Justice Steuer

Decision on June 13, 1956

The above-entitled action having been brought by the plaintiff for a judgment of divorce in favor of the plaintiff and against the defendant upon the ground of the adultery of the defendant at the times and places set forth in the complaint herein or for a judgment of separation upon the ground of the abandonment and non-support of the plaintiff by defendant, and for a judgment for maintenance and an allowance of counsel fees, and the

plaintiff having obtained an order of sequestration of this court entered November 24, 1954, pursuant to which order a levy was made upon property of the defendant situated within the State of New York, and the defendant having been served outside of the State of New York with the summons and verified complaint in this action and having appeared herein by Coudert Brothers, his attorneys, and having answered the complaint herein and the defendant having thereafter served an amended answer and the plaintiff having thereafter served a supplemental complaint, and the plaintiff having moved for an order for temporary alimony and counsel fees and the court having thereafter made its order herein on January 31, 1956 denying plaintiff's motion without prejudice to a renewal thereof at the trial, and the action having regularly come on for trial before Mr. Justice Steuer without a jury at Special Term, Part IV, of this court held on April 26, 1956, at the County Courthouse, City of New York, and the plaintiff having appeared upon the said trial by Meleney, Mitchell & Dick by Alexander C. Dick of counsel, and the defendant having appeared by Coudert Brothers his attorneys by Alexis C. Coudert.

The parties herein were married in 1942. At this time they both were residents of New York though plaintiff wife spent the greater part of her time teaching school in Virginia and defendant husband's newspaper interests kept him mostly in New England. Shortly after their marriage they settled in South Windham, Vermont where they bought a house. There is one child of the marriage.

In 1952 the parties experienced marital difficulties and the defendant left the plaintiff. He went to Nevada and procured a divorce. During the separation extensive negotiations were carried on between the parties as to the support to be provided. One provision of the negotiations is of signicance here. Defendant's mother lived in Oyster Bay, Long Island. All provisions were made contingent upon plaintiff taking the child and residing within twenty

miles of Oyster Bay. This fact was conclusively established. The reason for this was that defendant's mother was very fond of the child and wanted her near her. No provisions resulting from the negotiations were incorporated in the divorce.

In 1953 plaintiff, still residing in Vermont, brought a suit there for support of herself and the child. The court there found the Nevada decree valid, and, while provision for support of the child was made, that part of the decree which provided for the plaintiff was reversed by the Supreme Court upon the ground that the law of Vermont does not sanction support of a former wife.

Plaintiff then moved to this state. She has settled in Amenia. The latter place is not within twenty miles of Oyster Bay, but is sufficiently close to allow frequent visits to and from defendant's mother so that the spirit of the agreement is carried out and lends support to plaintiff's testimony that she resumed her residence in New York in order to comply with the agreement that she made.

This suit is for divorce and separation. It is obvious that the plaintiff cannot prevail. The Nevada decree is an absolute bar to recovery. Questions of the validity of the Nevada decree are no longer open. Litigation of the question in Vermont has settled that the Nevada decree is entitled to full faith and credit, and there is no suggestion of a reason or ground upon which the Vermont judgment can be questioned.

Plaintiff claims, however, that despite this she is entitled to an award of alimony and counsel fee pursuant to C.P.A. 1170-B. The pertinent parts of this section read: "In an action for divorce, separation or annulment, * * * where the court refuses to grant such relief by reason of a finding that a divorce * * * had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained, the court may, nevertheless, render in the same action such judgment as justice may require for the maintenance of the wife * * *."

The phrase "as justice may require" in the above has received attention in Vanderbilt v. Vanderbilt (147 N. Y. S. 2d, 125). It was there pointed out that the relief provided for in section 1170-B was not limited to wives who had a matrimonial domicile in New York but for those who had not two important questions were to be considered. The first was whether the wife came here prior to the divorce and the second was whether the circumstances of her coming showed that justice entitled her to an award of support. Taking these questions in the reverse order it is clear that a wife who establishes a separate residence in this state, thereby giving her a right to sue, gains nothing from the section unless she establishes something more than convenience and a forum in which she would enjoy greater rights than she would in some other jurisdiction. It may be taken here that her selection of New York as a residence came about as a legitimate selection of a home rather than a forum. This because of the relationship of the child with its grandmother.

On the first question however the findings are not so favorable to the wife. She came here already divorced. She came here from a state which had already decided that one in her status was not entitled to support, and this not in an unrelated action but in her own suit. There could be no clearer instance of a divorced wife who enjoyed no rights in her own domicile seeking to obtain them because now, for other reasons, she had effected a change of residence. The Court of Appeals (Vanderbilt v. Vanderbilt, N. Y.), found it unnecessary in that decision to pass on the question involved.

Lastly it should be pointed out that 1170-B provides no new or separate cause of action. It provides for incidental relief in the actions therein named. This action is only technically for marital relief. Plaintiff was advised through her Vermont suit that no such relief was open to her. It is doubtful whether justice requires that support

can be awarded in an action in which plaintiff starts with the knowledge that she can not prevail.

Judgment for defendant.

NEW YORK COURT OF APPEALS

Order and Final Judgment Entered October 16th 1958

State of New York in Court of Appeals. At a Court of Appeals for the State of New York, held at Court of Appeals Hall in the City of Albany on the sixteenth day of October A.D. 1958.

Present, Hon. Albert Conway, Chief Judge, presiding.

Mo. No. 483

ELEANORE M. LOEB, Appellant,

v.

WILLIAM LOEB, Respondent.

A motion for a reargument of the above cause having been heretofore made upon the part of the appellant herein and papers having been duly submitted thereon and due deliberation thereupon had:

ORDERED, that the said motion be and the same hereby is denied with ten dollars costs.

A copy

[SEAL]

/s/ GEARON KIMBALL
Deputy Clerk

New York Court of Appeals

Judgment Entered June 25, 1958

No. 114

COURT OF APPEALS

State of New York, ss.:

Pleas in the Court of Appeals, held at Court of Appeals Hall, in the City of Albany, on the 25th day of June in the year of our Lord one thousand nine hundred and fifty-eight, before the Judges of said Court.

WITNESS,

The Hon. ALBERT CONWAY,
Chief Judge, Presiding,
RAYMOND J. CANNON, Clerk,

Remittitur—June 25, 1958

No. 114

ELEANORE M. LOEB, *Appellant*,

v.

WILLIAM LOEB, *Respondent*.

Be it Remembered that on the 29th day of March in the year of our Lord one thousand nine hundred and fifty-eight, Eleanore M. Loeb, the appellant—in this cause, came here unto the Court of Appeals by Meleney, Mitchell & Dick, her attorneys, and filed in the said Court a Notice of Appeal and return thereto from the judgment of the Appellate Division of the Supreme Court in and for the First Judicial Department.

And William Loeb, the respondent—in said cause, afterwards appeared in said Court of Appeals by Coudert Brothers, his attorneys.

Which said Notice of Appeal and return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, the said Court of Appeals having heard this cause argued by Mr. Alexander C. Dick, of counsel for the appellant—, and by Mr. Alexis C. Coudert, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the judgment of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed, without costs.

And it was also further ordered, that the records aforesaid, and the proceeding in this Court, be remitted to the said Supreme Court, there to be proceeded upon according to law.

Therefore, it is considered that the said judgment be affirmed, without costs, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the Supreme Court of the State of New York before the Justices thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said Supreme Court, before the Justices thereof, & c.

RAYMOND J. CANNON.
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office,
Albany, June 25, 1958.

I hereby Certify, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

SEAL OF THE COURT OF APPEALS

RAYMOND J. CANNON, *Clerk*

Judgment of Supreme Court, New York County

Entered July 29, 1958 on Judgment of the Court of Appeals

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Judgment on Remittitur

ELEANORE M. LOEB, *Plaintiff*,

— against —

WILLIAM LOEB, *Defendant*.

The above-named plaintiff having appealed to the Court of Appeals of the State of New York from the judgment of affirmance of this Court entered upon the order of the Appellate Division of the Supreme Court, First Department, in the office of the Clerk of the County of New York on the 4th day of October, 1957, affirming the judgment in favor of the defendant and against the plaintiff heretofore entered herein in the office of the said Clerk on the 27th day of August, 1956, in favor of the defendant and against the plaintiff, and from each and every part of said judgment of affirmance and order of affirmance as well as from the whole thereof; and the said appeal having been duly argued at the said Court of Appeals, and after due deliberation the Court of Appeals having ordered and adjudged that the said judgment so appealed from be affirmed and judgment rendered for the defendant without costs; and having further ordered and adjudged that the proceedings herein be remitted to this Supreme Court there to be proceeded upon according to law; and the remittitur from the said Court of Appeals having been filed herein, and the order having been entered herein making the order and judgment of the said Court of Appeals the order and judgment of this Court;

Now on motion of COUDERT BROTHERS, attorneys for the defendant herein, it is hereby

ADJUDGED that the said judgment entered herein on October 4th, 1957, be and the same hereby is affirmed.

Judgment signed and entered this 29 day of July, 1958.

JAMES McGUIRRIN, *Clerk*

Judgment of Supreme Court,
New York County,

Entered After Trial on August 27th, 1956

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Special Term, Part IV

Hon. ARON STEUER, Justice.

Judgment

[Same Title]

The above-entitled action having been brought by the plaintiff for a judgment of divorce in favor of the plaintiff and against the defendant upon the ground of the adultery of the defendant at the times and places set forth in the complaint herein or for a judgment of separation upon the ground of the abandonment and non-support of the plaintiff by defendant, and for a judgment for maintenance and an allowance of counsel fees, and the plaintiff having obtained an order of sequestration of this court entered November 24, 1954, pursuant to which order a levy was made upon property of the defendant situated within the State of New York, and the defendant having been served outside of the State of New York with the summons and verified complaint in this action and having appeared herein by Coudert Brothers, his attorneys, and having answered the complaint herein and the defendant

having thereafter served an amended answer and the plaintiff having thereafter served a supplemental complaint, and the plaintiff having moved for an order for temporary alimony and counsel fees and the court having thereafter made its order herein on January 31, 1956 denying plaintiff's motion without prejudice to a renewal thereof at the trial, and the action having regularly come on for trial before Mr. Justice Steuer without a jury, at Special Term, Part IV, of this Court held on April 26, 1956, at the County Courthouse, City of New York, and the plaintiff having appeared upon the said trial by Meleney, Mitchell & Dick by Alexander C. Dick of counsel, and the defendant having appeared by Coudert Brothers his attorneys by Alexis C. Coudert of counsel, and the allegations and proof of the parties having been heard, and due deliberation having been had, and the court having duly made and filed its decision on June 13, 1956, in and by which it refused to grant the relief asked for by the plaintiff herein by reason of its finding that a valid divorce had been duly granted to the defendant herein by decree of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, dated July 11, 1952, in an action brought by the defendant herein in which jurisdiction of the person of the plaintiff herein was not obtained, and the further finding that plaintiff was not entitled to a judgment for maintenance pursuant to Section 1170-b of the Civil Practice Act or to an allowance for counsel fees,

Now, on motion of Coudert Brothers, attorneys for the defendant, it is hereby

ORDERED, ADJUDGED AND DECREED, that the complaint in this action be and the same hereby is dismissed upon the merits.

Enter,

A. S.,
J.S.C.

ARCHIBALD R. WATSON, Clerk.

STATUTORY PROVISIONS INVOLVED

Sec. 1170-b. Maintenance of wife where divorce or annulment previously granted on nonpersonal jurisdiction.

In an action for divorce, separation or annulment, or for a declaration of nullity of a void marriage, where the court refuses to grant such relief by reason of a finding by the court that a divorce, annulment or judgment declaring the marriage a nullity had previously been granted to the husband in an action in which jurisdiction over the person of the wife was not obtained, the court may, nevertheless, render in the same action such judgment as justice may require for the maintenance of the wife. The court, by order, at any time thereafter upon the application of either party to the action, after due notice to the other, to be given in such manner as the court shall direct, may annul, vary or modify such judgment. Subject to the provisions of section eleven hundred and seventy-one-b of this act, the authority granted by this action shall extend to unpaid sums or installments accrued prior to the application as well as to sums or installments to become due thereafter.

Added by L. 1953 ch. 663, effective April 13.

Sec. 1165-a. Conditions attached to maintenance of action for annulment or separation. An action to annul a marriage or for separation may be maintained in either of the following cases:

1. Where both parties are residents of the state when the action is commenced.

* * * * *

3. Where the parties were married without the state, and either the plaintiff or the defendant is a resident of the state when the action is commenced, and has been a resident thereof for at least one year continuously at any time prior to the commencement of the action.

Sec. 1166. Residence of married woman in action for divorce or separation. If a married woman dwells within the state when she commences an action against her husband for divorce or separation, she is deemed a resident thereof, although her husband resides elsewhere.